APPENDIX A

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

No. 92-35471

ROBERT HADEN KING, JR.,
Petitioner-Appellant,

v.

NEIL BROWN,
Superintendent, Clallam Bay Corrections Center,
Respondent-Appellee.

Appeal from the United States District Court
for the District of Oregon
Helen J. Frye, District Judge, Presiding

Argued and Submitted May 3, 1993

Decided Nov. 3, 1993

Phillip M. Margolin, Margolin & Margolin, Portland, OR, for petitioner-appellant.

Robert M. Atkinson, and Robert B. Rocklin, Asst. Attys. Gen., Salem, OR, for respondent-appellee.

Michael E. Rose, American Civil Liberties Union, Portland, OR, for amicus.

Before: PREGERSON, KLEINFELD, Circuit Judges, and LEGGE, District Judge.*

KLEINFELD, Circuit Judge:

King was convicted in Oregon state court of "aggravated murder" and sentenced to life imprisonment with a minimum of thirty years to serve. The main issue on appeal is whether the State of Oregon was bound to a ten year minimum on a plea to ordinary murder because of a plea bargain it made with King. King also claims that his prosecution violated the Interstate Agreement on Detainers because the State of Oregon secured his release from the State of Washington with an invalid indictment. The district court dismissed King's petition for habeas corpus relief. We affirm.

I. Facts

A man named James Salter allegedly hired King to find a hit man to kill Salter's ex-wife Julie. The hit man, Hill, killed Mrs. Salter pursuant to King's arrangement. King and Hill were convicted, in separate trials, but Salter was acquitted.

King was initially indicted on March 5, 1982, while he was in the custody of the State of Washington. He was transferred to Oregon pursuant to the Interstate Agreement on Detainers. The State of Oregon took custody of King on November 20, 1982. With extensions agreed to by King, the State of Oregon initially had until April 18, 1993 to try King under the indictment. O.R.S. 135.-775, art. IV(c).

On April 11, 1983, King filed a motion to quash the March 5 indictment, asserting that the indictment was improperly obtained under the Article VII § 5(2) of the Oregon Constitution. This provision requires that a grand

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* The Honorable Charles A. Legge, United States District Judge for the Northern District of California, sitting by designation.

jury consist of seven jurors, five of whom must agree to indict. The grand jury initially did consist of seven jurors, but the prosecutor excused one of the seven. The other six unanimously indicted. The Oregon trial court granted King's motion to quash the indictment, holding that there was no "good cause" for excusing the juror.

On April 12, 1983, the state filed a motion for a thirty day continuance to allow for resubmission to the grand jury. The trial court found "good cause" for the continuance, and gave the state until May 15, 1983 to file a new indictment. The court also denied King's motion to compel his return to the State of Washington.

On April 18, 1983, the state filed a second indictment. King was arraigned on the following day, and he filed a motion to dismiss for failure to try him within the time allowed under the Interstate Agreement on Detainers. The motion was denied.

King also objected to the state's second indictment on the ground that there was a substantial change in theory from the first indictment. On April 19, 1983, the prosecutor resubmitted the indictment on the original theory, and a third indictment was returned immediately. King's motion to quash or set aside this indictment was denied.

On August 3, 1983, King entered into a plea agreement with the State of Oregon. The agreement provides for ten year eligibility for parole in exchange for a guilty plea to murder, information, and testimony:

. . . . .

> (2) The trial presently set for August 8, 1983 will be continued at the defendant's request. . . .
>
> (3) The defendant will consent to be interviewed by officers of the state or their agents in the presence of defendant's counsel concerning all facts he knows about the death of Julie Ann Salter on September 23, 1980. The officers of the state or their agents will investigate those facts and present the results of

the investigation to the state. The state will evaluate those facts on the issue of whether or not they provide independent corroboration of the defendant's representation that James Salter agreed to pay him money and things of value to arrange for the death of Julie Ann Salter.

(4) If the State concludes that said information, in conjunction with information otherwise known to the state, does provide said independent corroboration, then and in that event the state will allow the defendant to enter a plea of guilty to the charge of murder with the understanding that the defendant will receive a life sentence with an order that he serve a minimum of ten years before being eligible for parole, and that said sentence will run concurrent to any sentence the defendant is now serving.

. . . . .

(6) It is further agreed by the defendant that if such plea should be entered, that the state will seek a presentence investigation and the defendant will testify truthfully in any trial against any other person who may be indicted in the future for any crime connected with the death of Julie Ann Salter.

. . . . .

(8) Should the defendant refuse to cooperate or give information requested pursuant to this agreement, or should the state conclude under the terms of this agreement that the information does not provide independent corroboration, the parties agree that no evidence resulting from this agreement, whether that evidence is information, persons, names, documents or physical exhibits, will be introduced by the state against the defendant in any trial or hearing unless the state can establish that it was already aware of that information.

. . . . .

King provided information to police and testified at the grand jury and bail hearings of James Salter.

Then King demanded something more from the state, in addition to the ten year eligibility for parole and delay of his trial for which he had bargained. He insisted that the State of Oregon agree to facilitate his transfer to a prison in his home state of Alabama, and threatened to stop taking his medication so that he would relapse into his preexisting mental illness if the state did not acquiesce. Exh. 119, at 516-R-T. The state refused to grant King's additional requests and he stopped taking his medication. *Id.*

On February 24, 1984, King sent a handwritten motion to the court to obtain a trial date and dismiss counsel. In the motion he stated that he "withdraws in full . . . from all life endangering plea-negotiations that exist at present."[1] Appellant's brief, at A-4. In response, the trial court held a hearing, during which King's counsel questioned King's competence to decide whether to proceed pro se. The court ordered an examination by Dr. Parvaresh, who opined that King was not competent at that time, but if he began taking his medication, his competence should be reevaluated in seven to ten days. The court ordered additional examinations.

In April 1984, King testified at the trial of James Salter, as agreed under the terms of the plea agreement. On May 31, 1984, the trial court held a hearing to determine whether King was competent to assist his own defense. Evidence was presented by both sides regarding King's psychological fitness, and the trial court found that King "understands the nature of the proceedings and that he is able to assist and co-operate with counsel and is able to participate in his defense." Exh. 119, at 518-19. There was testimony that King had studied psychology and completed law school, and that he would feign

[1] King apparently considered his agreement "life endangering" because he allegedly had been receiving death threats from other prisoners for agreeing to testify against Salter. These alleged threats contributed to his desire for a transfer to Alabama.

mental illness to manipulate the proceedings in his case. King's counsel advised the court that King had gone back on his medication and was able to understand the proceedings and assist counsel, so he did not wish to call witnesses and requested that the court make its ruling based upon the medical reports. King would not speak in court so that the court could make an independent judgment, so the state, concerned about the adequacy of the record, called medical witnesses anyway, and King's attorney cross-examined. The court ruled that King was competent to stand trial, and that ruling is not challenged in this appeal.

Then the court asked counsel if a trial date should be set. King, through counsel, advised the court that a trial date should be set, and that King was withdrawing his motion to proceed pro se:

> MR. LYONS [King's counsel]: Your Honor, I have discussed this with Mr. King. Again he does not wish, for whatever reasons may be, to make any representations to the Court. But he has authorized me to do so. And *we are prepared to set a trial date in this case.*
>
> I would point out to the Court that Mr. King tacitly is withdrawing his motion to proceed pro se, which puts me back in the position of being his attorney at this time.
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> . . . . .
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> . . . I could be prepared for trial by the middle of August. . . .
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> THE COURT: What is your reaction?
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> MR. MILLER [Deputy District Attorney]: I'm going to let Mr. Eglitis address the trial, scheduling the trial. My reaction, I would like to mention to the Court, is that the defendant has entered a plea of not guilty to this charge of Aggravated Murder. Under our agreement that we have entered into with

the defendant, we have offered him an opportunity, pursuant to our agreement, to plead guilty to the charge of Murder with certain understandings. *It's my understanding that by asking for a trial date at this time he is seeking to withdraw that plea agreement.* And if that is the case, we want that understood right now.

THE COURT: Well, I would think, Mr. Miller, you better file a formal motion to that effect . . . because the plea agreement that I approved is in the file, is it not?

MR. MILLER: Yes.

THE COURT: And I think some disposition has to be made of that. *So if I were you, I would file a formal motion to not be bound by the plea agreement, that it be held for naught, no force and effect.*

MR. MILLER: All right.

THE COURT: The record then would stand that he has a not guilty plea to the charge of Aggravated Murder.

Id. at 519-21 (emphasis added).

King's attorney did not contradict the government's "understanding that by asking for a trial date at this time he is seeking to withdraw that plea agreement." He proceeded instead to request co-counsel for the trial.

The state then filed a motion for the court to enter a finding that King rescinded the plea agreement. A hearing was held on July 9, 1984. One of King's attorneys explained that "we are still trying to work out the custody arrangement to the State of Alabama. I feel that may have some bearing on what Mr. King decides to do here." He requested more time to work on getting "a commitment out of, at least, the Alabama Parole Board," so that after Alabama committed itself, King could "make an intelligent decision as to whether he

wants to pursue the plea agreement or go to trial." The state's attorney responded by explaining its need to know whether King was going to plead guilty or not, because expensive trial preparation needed to begin if he would not. The State was at that time still willing to abide by the terms of the plea agreement:

> . . . today is the 9th of July. The State would like to know for certain, we would like to start preparing for trial. And even the preparations for trial are exceedingly expensive. As the court may know, this case involves largely out-of-state witnesses. It's a lengthy and expensive procedure to procure their attendance and we would like not to have to wait until any longer to begin that. We, of course, would like not to begin it if, in fact, we know that Mr. King is going to enter his plea of guilty and follow the plea agreement.

The judge, noticing the offer to proceed according to the plea agreement, asked for clarification from the state of its position, obtained it, and entered a finding that the state was no longer bound by the plea agreement:

> THE COURT: Do you think you are still bound by the plea agreement and will go through with it after was has happened?
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> MR. EGLITIS [Deputy District Attorney]: Well, we are not, Your Honor. But I believe the option of that would then be with us. *Mr. King has indicated to this Court that he wants a trial date, that he doesn't want to have anything to do with the plea agreement and would like the Court to enter the order to that effect.* That would in essence leave the option with the State rather than with Mr. King.
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> THE COURT: Do you want to add something else, Mr. Lyons?
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> MR. LYONS: *No, Your Honor, I have nothing further to add at this time.*

Id. at 526 (emphasis added). The court then issued an order "relieving the State from any obligation that was originally involved in the plea agreement." *Id.* at 526-27. King's trial was scheduled to begin on August 20, 1984.

A month later, twelve days before trial, King filed a motion to compel specific performance of the plea agreement. He argued that he had substantially complied with his obligations under the agreement, so the state should accept a plea to the lesser charge of murder, rather than aggravated murder as charged, and he should receive the sentence originally agreed upon. At a hearing on the motion, King's attorney acknowledged that King had, after testifying against Salter, advised the court that he wanted to go to trial rather than proceed with the plea agreement, but claimed that at the time, King had not been taking his medication. The state's attorney pointed out that trial had now been delayed a year, four witnesses had disappeared, and the witnesses who would testify would have another year added to the time for memory to fade, and also pointed out King's apparent competence since the time the court had made the competency determination.

The trial judge denied King's motion, stating "I think it's mainly whether or not the State has been prejudiced by the failure of the defendant to follow the plea agreement, and I find they have been." *Id.* at 537. He noted the delay, the need to try to locate the witnesses again, and that this was the second or third time the state had to prepare the case for trial. The judge specifically found that King made an informed decision and knew what he was doing when he withdrew from the plea agreement. *Id.* at 538-39.

King was convicted at a jury trial of aggravated murder, and sentenced to life imprisonment, with a thirty year mandatory minimum.

King appealed, and exhausted his remedies in state court. *See State v. King,* 84 Or.App. 165, 733 P.2d 472, *rev. denied,* 303 Or. 455, 737 P.2d 1248 (1987). He then filed for habeas relief in federal court pursuant to 28 U.S.C. § 2254. He alleged, inter alia, that the state court prosecution should have been barred by the Interstate Agreement on Detainers and that the State of Oregon violated its obligations under the plea agreement. These two issues are the subject of this appeal.

II. The Plea Agreement.

We review de novo the district court's denial of habeas relief. *Adams v. Peterson,* 968 F.2d 835, 843 (9th Cir. 1992) (en banc), *cert. denied,* —— U.S. ——, 113 S.Ct. 1818, 123 L.Ed.2d 448 (1993). We review the district court's factual findings for clear error, and state court findings of fact are entitled to a presumption of correctness.[2] *Brown v. Burns,* 996 F.2d 219, 220 (9th Cir.1993); 28 U.S.C. § 2254(d) (presumption of correctness). To overcome the presumption of correctness, "the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous." 28 U.S.C. § 2254(d).

The state court specifically held that King was competent when he rescinded the plea agreement. *See King,* 733 P.2d at 479. "A finding on the issue of competence is a finding of fact," and thus is presumed correct. *Brewer v. Lewis,* 989 F.2d 1021, 1030 (9th Cir.1993). King has not presented evidence that he was incompetent at the time of the court's ruling sufficient to establish by convincing evidence that the state court's determination was erroneous. At the hearing to determine competency, both sides presented substantial evidence to support their

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[2] There are exceptions to the presumption of correctness, 28 U.S.C. § 2254(d)(1)-(8), but none apply here, where King was given full and fair hearings on the issues of his competence and the rescission of the plea agreement.

positions. The state court's conclusion that King was competent is supported by the record, and is thus entitled to deference.

The state court also found that King rescinded the plea agreement by requesting a trial date and by failing to comply with the plea agreement. The Court of Appeals of Oregon stated that this "finding is supported by the evidence in the record and we are bound by it." *King*, 733 P.2d at 479.

The agreement required three acts by King, and one by the State of Oregon. King would (1) provide information, (2) testify, and (3) plead guilty to murder. The state would accept the plea to murder, rather than aggravated murder, and agree to a ten year mandatory minimum before eligibility for parole and a sentence concurrent with King's Washington sentence. This was a bilateral contract, in which the state promised to do one thing, if King did three. King did two, then announced his intention not to proceed further. The state changed its position in reliance on King's announced intention to go to trial. King had repeated opportunities to correct the state's misunderstanding, if it was a misunderstanding, that he would go to trial, not plead guilty. There was no misunderstanding, though, and King claims none. He just wanted something more than he had bargained for, incarceration in his home state of Alabama, instead of in Oregon.

In *United States v. Osif*, 789 F.2d 1404 (9th Cir. 1986), we explained "a defendant does not have a constitutional right to a plea bargain, . . . nor, when he rejects a plea, can he later object to the government's decision to proceed to trial on the counts originally charged." *Id.* at 1405. Here, King rescinded the plea agreement, and thus it was no longer in force or available for him to accept. "The government is under no obligation to reoffer an agreement that was previously rejected. . . ." *Id.* Although King did not initially reject the

government's offer of the plea agreement, he withdrew his acceptance. Thus, the government had no obligation to reoffer the original plea agreement.

"The construction of a plea agreement in a state prosecution and the concomitant obligations flowing from it are, within broad bounds of reasonableness, matters of state law." *Ricketts v. Adamson,* 483 U.S. 1, 6 n. 3, 107 S.Ct. 2680, 2684 n. 3, 97 L.Ed.2d 1 (1987). "Once a state court has, within broad bounds of reasonableness, determined that a breach of a plea agreement results in certain consequences, a federal habeas corpus court must independently assess the effect of those consequences on federal constitutional rights. This independent assessment, however, proceeds without second-guessing the effect of the breach and is not a license to substitute a federal interpretation of the terms of the plea agreement for a reasonable state interpretation." *Id.*

The state court decided that King had rescinded his agreement, and that the state had been prejudiced by his failure to abide by the agreement, so he was not entitled to specific performance. *King,* 733 P.2d at 479. The factual findings of intentional rescission, competence, and prejudice to the state, are entitled to the presumption of correctness. The determination falls well within the "broad bounds of reasonableness." King has not suggested that any constitutional right was violated by this determination. His argument appears to be that the state court determination fell outside the "broad bounds of reasonableness," because King had performed so much of his agreement that it violated his right to due process of law not to command specific performance against the state.

We reject the proposition that the Oregon state determination fell outside the "broad bounds of reasonableness." King partially performed his agreement, by giving information and testifying, but then repudiated it. *See* Restatement (Second) Contracts § 250 (1981). He said

he would not plead guilty unless he got more than he had bargained for—he wanted Alabama incarceration, in addition to ten year parole eligibility and concurrent sentences. His repudiation was not a casual remark taken advantage of by a prosecutor eager to escape performance—he was brought into court, with counsel, and the matter was carefully reviewed in a context which gave King an opportunity to clarify his intention to adhere to the plea bargain, had that been his intention. King's repudiation of his agreement excused the government's failure to perform its part of the bargain. *Id.* § 253(2). A few days before trial, King offered to perform the agreement he had repudiated, that is, to nullify his repudiation. *Id.* § 256. But the judge reasonably ruled that he did not have the power to impose on the government the contract he had repudiated. The July 9, 1984 hearing in open court established that the repudiation was understood by both parties as final, so King had no power subsequently to nullify it and take advantage of the repudiated agreement. *Id.* § 256(2). Also, the trial judge found that the government had materially changed its position in reliance on the repudiation, by engaging in expensive and burdensome pretrial preparation. *Id.*

Since the state court construction fell within "the broad bounds of reasonableness," we cannot engage in "second guessing the finding of breach" or substitute an independent federal interpretation which would treat King as having not breached, or as entitled to specific performance despite his breach. *Ricketts,* 483 U.S. at 6 n. 3, 107 S.Ct. at 2684 n. 3. The matter is not so hypertechnical as this explanation may sound. King and his attorney sat silently as the state in open court attempted to clarify the status of his intentions. The state trial judge reasonably prevented him from sandbagging the state with yet another change of position on the eve of yet another trial date. King made his decision, to repudiate his agreement, and was reasonably and fairly held to it.

III. Interstate Agreement on Detainers.

King claims that his prosecution by the State of Oregon was barred by the Interstate Agreement on Detainers, codified at O.R.S. § 135.775 et seq. We have jurisdiction because of the Congressional approval of the compact, *see* 18 U.S.C. app. § 2 (1982), and review de novo. *Snyder v. Sumner,* 960 F.2d 1448, 1452 (9th Cir.1992) (citations omitted).

The State of Oregon indicted King on March 5, 1982, while he was in the custody of the State of Washington. Pursuant to the Interstate Agreement on Detainers, Oregon obtained custody of King on November 20, 1982. With a twenty-nine day extension agreed to by King, in addition to the 120 days provided for under O.R.S. 135.775, art. IV(c), Oregon had until April 18, 1983 to try King. On April 11, 1983, King filed a motion to quash the March 5 indictment on the ground that it was returned by a grand jury consisting of only six members, rather than seven, as required under the Oregon Constitution.[3] The trial court granted King's motion and quashed the indictment.

On April 12, 1983, the prosecution filed a motion for a thirty day continuance to allow time to resubmit the case to a grand jury. The trial court found that "good cause" existed for the continuance, so it granted the state's motion. King challenges this ruling.

In his petition for writ of habeas corpus, King asserted that his "prosecution was barred under the speedy trial provisions of the Interstate Agreement on Detainers" on the ground that "the State's motion to postpone trial for an additional 30 days was granted improperly." CR 1, at 6. His argument conceded that good cause would excuse the delay, but claimed that there was no good cause:

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[3] Initially, the grand jury consisted of seven members, but the prosecutor excused one of the jurors.

> If the court was correct in concluding that the state showed good cause when it requested a 30 day continuance to obtain a new indictment, then the 120 day period would have been tolled for 30 more days and petitioner's position that the 120 day speedy trial requirement of the IAD had been violated would be incorrect.
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> . . . . .
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> The question presented to this Court is whether a state, which obtains a defendant from another state through the use of an invalid indictment, can establish good cause for a continuance under the IAD when the defendant successfully moves to dismiss the invalid indictment and the basis for the state's continuance is the convening of a grand jury to obtain a new, valid indictment against the defendant.

CR 41, at 40-41.

The district court adopted the findings and recommendations of the magistrate judge, that there was good cause:

> In light of the timely nature of the State's request, and considering the nature of the request, I agree with the Oregon Court of Appeals' holding in this case that the trial court did not err in granting a continuance for good cause shown. In light of the previous indictment returned by the grand jury, a continuance to resubmit the charges to the grand jury was both reasonable and necessary.

ER 10.[4]

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[4] The magistrate judge correctly noted that the only issue King raised was "whether a trial court has the discretion to grant a continuance, upon a timely motion by the State, to permit the State to resubmit the case to the grand jury under the circumstances presented here." ER 11. To the extent that King raises additional issues relating to the Interstate Agreement on Detainers, we will not address them for the first time on appeal. *See United States v. Flores-Payon*, 942 F.2d 556, 558 (9th Cir.1991).

In rejecting this argument by King, the Oregon Court of Appeals reasoned as follows:

> Defendant argues that there is a contradiction in the trial court's rulings because, in dismissing the first indictment, the court found that there was not good cause for excusing one grand juror but, when the state requested a continuance, the court found good cause to continue. We see no contradiction. Although the prosecutor lacked good cause to excuse the juror, it does not follow that, when defendant's motion to quash was made just six days before his speedy trial period would expire, the state lacked good cause to seek a continuance to resubmit the case to the grand jury. The trial court did not err in denying defendant's motion.

King, 84 Or.App. at 170, 733 P.2d at 476. The Court of Appeals of Oregon has it exactly right. The unanimous indictment was technically defective, but King did not move to dismiss until the end of the time period, so the state had good cause for a thirty day continuance to take the case to a grand jury for another indictment.

AFFIRMED.

PREGERSON, Circuit Judge, dissenting:

Because the State of Oregon failed to honor its obligations to King under the terms of a plea agreement, I dissent from the majority opinion. I believe that the district court erred in finding that King's due process rights were not violated.

BACKGROUND

On April 19, 1983, King was indicted for the aggravated murder and murder of Julie Salter in Clackamas County, Oregon. On August 3, 1983, King and the State of Oregon ("the state") entered into a plea agreement, which was accepted by the court. Under the terms of the agreement:

1. King agreed to provide information to the state concerning the involvement of co-defendant James Salter in the murder of Salter's ex-wife, Julie. King also agreed to testify for the state at any bail hearings, grand jury proceedings, and trials in the James Salter prosecution.

2. In exchange for King's cooperation, the state agreed to "allow [King] to enter a plea of guilty to the charge of murder with the understanding that [King would] receive a life sentence with an order that he serve a minimum of ten years before being eligible for parole, and that said sentence will run concurrent to any sentence the defendant is now serving." [1]

The plea agreement did not set a deadline for King to enter a guilty plea. The agreement further provided that if King refused to cooperate, "no evidence resulting from th[e] agreement, whether that evidence is information, persons, names, documents or physical exhibits, [would] be introduced by the state against [King] in any trial or hearing unless the state can establish that it was already aware of that information."

On December 6, 1983, King testified at Salter's grand jury proceedings in accordance with the plea agreement. On December 7, 1983, King's counsel told the court that King wished to enter his guilty plea in the middle of the following week. On December 14, 1983, the state and King agreed to continue the entry of his plea to a future date, as long as King entered such plea *before* the Salter trial.[2]

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[1] King was already serving two consecutive sentences, each with a twenty year minimum, in Washington state prison.

[2] On this issue, the following exchange occurred:

THE COURT: What is the purpose of delaying the entry of that plea?

THE DISTRICT ATTORNEY: Your Honor, this we have been informed Mr. King wishes. We examined the relative benefits and detriments that might result in a trial of Mr. Salter and it's our opinion it is of no detriment to us as long

King continued to fulfill his obligation under the plea agreement. In addition to testifying before the grand jury, King spoke with the Oregon police about Salter's involvement in Julie Salter's murder and testified at Salter's bail hearing in January 1984.

In December 1983, King began receiving serious death threats from other prisoners because of his agreement to testify against Salter. As a result, Oregon State prison authorities implemented extraordinary security provisions to ensure King's safety.[3] In addition, King's counsel undertook efforts to arrange for King's transfer to state prison in Alabama, King's home state.

On February 23, 1984, King filed a handwritten motion asking the court to discharge his attorneys so he could proceed pro se. In addition, he asked the court to set a trial date and accused his attorneys of placing his life in jeopardy because of their plea negotiations. Accordingly, he asked the court to permit him to withdraw from "all life endangering plea agreements."

On February 24, King asked the court to permit him to proceed pro se. King stated to the court that he no

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as the plea is entered before Mr. King testifies, or probably more specifically before the Salter trial starts.

THE COURT: What if he changes his mind?

THE DISTRICT ATTORNEY: Prior to the testimony?

THE COURT: Yes.

THE DISTRICT ATTORNEY: In that sense, Your Honor, there would be a breach of the agreement and we would proceed as if the agreement was null and void. In other words, we would go ahead and prosecute Mr. King for the charge of aggravated murder.

[3] Affidavits from prison officials indicated that King's cell was fitted with bullet-proof plates of armor and King was put in a bullet-proof vest and disguised whenever he was taken from his cell. Indeed, the prison authorities stated that the security precautions for King were the most extreme they had ever seen. In fact, despite such precautions, a fellow prisoner still managed to stab King in the eye with a pencil after calling him a "snitch."

longer wished to enter a guilty plea as allowed under the plea agreement because the state refused to guarantee him a transfer to Alabama as requested by him for security reasons.

As a result of King's motions, one of King's two attorneys told the court that King was not competent to represent himself and moved to withdraw. On February 27, 1984, King's second attorney advised the court that King was not competent to stand trial because he was mentally ill and had stopped taking his medication, which included daily does of Tegretol, Dilantin, Haldol, Lithium, and Benadryl.[4] In response, the court ordered Dr. Parvaresh, a psychiatrist, to conduct an examination to determine King's competency to stand trial.

On March 3, 1984, the state also moved for a competency examination of King and requested that the examination be conducted at the Oregon State Hospital. On March 9, 1984, Dr. Parvaresh submitted his written opinion, which concluded that King "is not competent to stand trial as he is clearly mentally too impaired to assist in his own defense." On April 9, 1984, Dr. Jerry K. Larsen, a second phychiatrist, gave a similar opinion. The court held no hearing concerning King's mental competency until the end of May 1984.

In April 1984, Salter's murder trial began. At the trial, King fulfilled another part of his plea agreement obligations by testifying against Salter for three days. Despite the state's previous assertion at the December 14, 1983 hearing that it wanted King to enter his guilty plea *before* testifying at the Salter trial, the state did *not* require King to enter a guilty plea before testifying. On May 10, 1984, Salter was acquitted.

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[4] King has suffered from mental illness since he sustained head injuries in an aircraft accident in January 1979. As a result, he experienced memory loss and has since required hospitalization and medication to control grand mal seizures.

On May 17, 1984, King's counsel reminded the court that it had not yet ruled on King's competency to stand trial and to proceed pro se. The court had postponed the competency hearing to allow King to tesify at the Salter trial.

On May 31, 1984, the court held a competency hearing. The court determined that, although King suffers from a "mental defect," he was nonetheless able to assist in his own defense. Hence, the court determined that King was competent to stand trial. King refused to address the court but through his counsel withdrew his motion to proceed pro se.

In addition, at the May 31 hearing, King's counsel told the court that King had asked that a trial date be set. In response, the prosecutor took the position that, by requesting a trial date, the state assumed that King was seeking to withdraw from the plea agreement. The court told the state to file a formal motion for rescission. On June 5, 1984, the state filed a motion asking the court to find that King had rescinded the plea agreement.

On July 9, 1984, King's counsel asked the court for additional time before ruling on the state's request to terminate the plea agreement. In the interim, King's counsel wished to see if he could secure a commitment from Alabama for King's transfer to Alabama state custody. King's counsel informed the court that he had prepared a 700-page presentation for the Alabama Parole Board, and was still trying to arrange the transfer. King's counsel further informed the court that a commitment from Alabama would permit King to "make an intelligent decision as to whether he wants to pursue the plea agreement or go to trial."

In response, the prosecutor argued that the state did not want to undertake extensive trial preparations if King were ultimately going to plead guilty. The prosecutor again asserted that, by asking for a trial date, King had

withdrawn from the plea agreement. King's counsel remained silent. The trial court then issued an order terminating the plea agreement. In so ruling, the court simply stated "[t]hat the defendant has breached and rescinded the plea agreement entered into between the defendant and the State of Oregon." *State v. King,* 84 Or. App. 165, 175, 733 P.2d 472, *rev. denied,* 303 Or. 455, 737 P.2d 1248 (1987) (citing trial court transcript).

On August 8, 1984, twelve days before his trial was scheduled to begin, King filed a motion expressing his desire to plead guilty and asking the court to compel specific performance of the plea agreement. The state opposed King's motion, alleging that it had been prejudiced because of the cost and inconvenience of having to prepare for trial.

On August 15, 1984, the court held a hearing on King's motion to compel specific performance of the plea agreement. At the hearing, King's counsel pointed out that King had fully complied with his duties under the plea agreement by cooperating with the state in Salter's prosecution and by testifying against Salter for three days. In addition, King's counsel reminded the court that, in reliance on the plea agreement, King had relinquished substantial rights, such as the right to a speedy trial, the right to remain silent, and the right not to incriminate himself. Accordingly, counsel argued that fundamental fairness as required by the Fourteenth Amendment's Due Process Clause mandated that King receive the benefit of his plea bargain. King's counsel also told the court that he did not believe King was competent to make an informed and rational decision about entering a plea when he earlier asked for a trial date.

The trial court found that King's request for a trial date had prejudiced the state. Hence, the court denied the motion to compel specific performance of the plea agreement.

Thereafter, King was tried and convicted by a jury for aggravated murder in violation of O.R.S. 163.095(1). The trial court sentenced him to life imprisonment with thirty years' mandatory minimum. The court further ordered this sentence to be served consecutively to the two consecutive, twenty-year minimum sentences he was already serving in the State of Washington.

After exhausting state remedies, *see State v. King*, 84 Or.App. 165, 733 P.2d 472, *rev. denied*, 303 Or. 455, 737 P.2d 1248 (1987), King filed a habeas corpus petition in federal district court under 28 U.S.C. § 2254. In his petition, King alleged that the failure of state authorities to fulfill their obligations under the plea agreement violated his right to fundamental fairness as guaranteed by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. In addition, King asked the district court to decide: (1) whether the state had waived its objections to King's failure to enter a guilty plea by using his testimony at trial without insisting he enter a plea; (2) whether King was competent to enter or withdraw from a plea; (3) whether King was ever required to enter a plea before the start of his trial under the terms of the plea agreement, which was drafted by the state and did not contain a cut-off date for entry of plea; and (4) whether the state had demonstrated prejudice.

The district court did not address any of King's substantive arguments.[5] Rather, on April 23, 1992, the court dismissed King's habeas petition on the ground that it lacked jurisdiction because King had not demonstrated a violation of a federal constitutional right. In so ruling, the court concluded that King had not relied to his detriment on the state's promises in the plea agreement because *in King's own trial* the state did not use anything said

[5] King's habeas petition was referred to a Magistrate who made recommended findings of fact and conclusions of law, which the district court then adopted in their entirety.

or done by King under the plea agreement to secure his conviction.[6]

ANALYSIS

King alleges a violation of his right to fundamental fairness as guaranteed by the Fourteenth Amendment's Due Process Clause and therefore raises a cognizable claim for habeas corpus relief under 28 U.S.C. § 2254.

Specifically, King contends that it was fundamentally unfair for the state to reap the benefit of his substantial cooperation under the plea agreement and then turn around and rescind the agreement, which he had not breached. As support for such claim, King cites the following: (1) he disclosed relevant information to the police about Salter's involvement in Julie Salter's murder; (2) he testified for the state at Salter's bail and grand jury hearings; and (3) he testified for three days for the state at Salter's murder trial. Hence, King contends that he is entitled to specific performance of the plea agreement.

"Applying the Due Process Clause is . . . an uncertain enterprise which [requires that we] discover what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake." *Lassiter v. Department of Soc. Serv. of Durham Cty.*, 452 U.S. 18, 24-25, 101 S.Ct. 2153, 2158-59, 68 L.Ed.2d 640 (1981). As a general rule, the fundamental fairness component of the Due Process Clause of the Fourteenth Amendment requires prosecutors to honor bargains made with criminal defendants. *See, e.g., Mabry v. Johnson*, 467 U.S. 504, 104 S.Ct. 2543, 81 L.Ed.2d 437 (1984); *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971); *United States v. Carrillo*, 709 F.2d 35, 37 (9th Cir. 1983). Because plea agreements

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[6] "Detrimental reliance" is a phantom issue. The dispositive issue is "fundamental fairness" as required by the Due Process Clause.

implicate important due process rights, "the process must be fair." *United States v. Packwood,* 848 F.2d 1009, 1011 (9th Cir.1988).

This circuit has concluded that where a defendant has fulfilled *all obligations* under a plea agreement, "under settled notions of fundamental fairness the government [is] bound to uphold its end of the bargain." *Carrillo,* 709 F.2d at 37 (emphasis added) (citing *United States v. Irwin,* 612 F.2d 1182, 1189-91 (9th Cir.1980) (recognition of enforceability of cooperation agreements); *United States v. Garcia,* 519 F.2d 1343, 1345 & n. 2 (same); *United States v. Hallam,* 472 F.2d 168, 169 (9th Cir.1973) (where defendants fully discharge their obligations under plea agreement government is bound to fulfill its promise to forego future criminal prosecution)) (additional citations omitted).

Here, under the plea agreement, King agreed to provide information to the state regarding the involvement of co-defendant Salter in the murder of Julie Salter. King also agreed to testify for the state at bail hearings, grand jury proceedings, and the trial in the Salter prosecution.

In return, the state agreed *to allow* King to plead guilty to murder instead of aggravated murder and thereby receive a more favorable sentence.

The state now contends that under the plea agreement King was *obligated* to enter his guilty plea, and to do so by a certain date. Hence, the majority opinion concludes that, by asking the court to set a trial date, King breached the plea agreement by failing to perform an obligation thereunder. I disagree.

In interpreting a plea agreement, we hold the state to the *literal* terms of the plea agreement. *Packwood,* 848 F.2d at 1012; *United States v. Read,* 778 F.2d 1437, 1441 (9th Cir.1985), *cert. denied,* 479 U.S. 835, 107 S.Ct. 131, 93 L.Ed.2d 75 (1986). Here, the literal language of the plea agreement provides that the state

will allow, not require, King to enter a guilty plea as a result of his cooperation in Salter's prosecution. In addition, the language of the plea agreement does not state that King will relinquish his right to enter a guilty plea if he fails to enter such plea by a particular deadline.

Hence, I submit that one may properly assume from the literal language of the plea agreement that King was *allowed* to enter a guilty plea to murder at any time before the start of his own trial. Indeed, I note that the state did not hesitate to call King as a witness in Salter's trial in April 1984, *despite* the fact that King had not yet entered his guilty plea and had stated to the court in February 1984 that he wanted to withdraw from the "life endangering" plea agreement.

I therefore conclude that King affirmatively complied with *all* of his *obligations* under the plea agreement by providing all of the information and testimony required of him by the state.

Moreover, other factors convince me that King did not breach the plea agreement by requesting a trial date. King's competency was seriously at issue during this period because, despite his mental illness, King had stopped taking his medication. As a result, the court ordered several psychiatric evaluations and held a hearing to determine King's competency.[7] Also, King requested withdrawal from "all life endangering plea agreements" only after he had received serious death threats that had prompted prison officials to implement extraordinary security provisions to ensure his safety. Such threats re-

[7] King's apparent instability is evidenced by the fact that, despite his alleged desire to withdraw from the "life endangering" plea agreement, he still testified against Salter *for three days* at Salter's murder trial in accordance with the terms of such plea agreement. The state cannot urge this court to accept King's alleged intentions to withdraw from the plea agreement as credible when the state itself did not do so, but proceeded to call King as a witness in the Salter murder trial under the terms of the plea agreement.

sulted from his agreement to turn state's witness against Salter. In fact, King's counsel, at the time the motion to rescind was heard, specifically requested additional time to secure a transfer to Alabama state prison to ensure King's safety, to enable King to "make an intelligent decision as to whether he wants to pursue the plea agreement or go to trial." The court summarily denied this request.

In light of King's full compliance with *all obligations* under the plea agreement and his precarious mental state, which no doubt was exacerbated by the threats against his life resulting from his cooperation with the state, it defies reason to construe King's request for a trial date as a rescission of the plea agreement. The Oregon courts erred in so doing.

In light of the foregoing, I find that fundamental fairness as guaranteed by the Fourteenth Amendment's Due Process Clause mandates the specific performance of the state's obligations under the plea agreement.[8] Accordingly, I believe that this case should be remanded to the district court to issue a writ of habeas corpus directing the State of Oregon within 60 days to vacate King's conviction on condition that King enter a guilty plea and receive a sentence in accordance with the plea agreement, or, in the alternative, to release King from the strictures of his Oregon sentence.

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[8] In light of this dispositive ruling, I see no need to address any other issues raised by the briefs or the district court's dismissal of King's habeas petition.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 90-315-DA

ROBERT HADEN KING, JR.,
Petitioner,

v.

NEIL BROWN,
Superintendent, Clallam Bay Corrections Center,
Respondent.

ORDER

FRYE, Judge:

The Honorable William M. Dale, United States Magistrate Judge, filed Findings and Recommendation on March 6, 1992. Petitioner has filed timely objections to the Findings and Recommendation. When either party objects to any portion of a magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the magistrate's report. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). The matter is before this court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

This court has, therefore, given *de novo* review of the rulings of Magistrate Judge Dale. This court ADOPTS the Findings and Recommendation of Magistrate Judge Dale dated March 6, 1992 in its entirety.

IT IS HEREBY ORDERED that respondent's motion to deny habeas corpus relief (#10) is GRANTED, and this action is dismissed.

DATED this 21 day of April, 1992.

/s/ Helen J. Frye
HELEN J. FRYE
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 90-315-DA

ROBERT HADEN KING, JR.,
Petitioner,

v.

NEIL BROWN,
Respondent,

FINDINGS AND RECOMMENDATION

DALE, Magistrate-Judge

Background

Petitioner, a prisoner at Clallam Bay Corrections Center, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The parties agree that two issues remain to be resolved:

1. Was Petitioner's conviction for aggravated murder obtained in violation of his right to due process and against self-incrimination because the trial court refused to specifically enforce the parties' plea agreement; and
2. Was King's conviction barred by the speedy trial provisions of the Interstate Agreement on Detainers.

(*See* Minute Order of November 27, 1991.) Because of the chronology of facts upon which each issue depends, I address them in reverse order.

Discussion

I. *Interstate Act on Detainers.*

A. *Background.*

On March 4, 1982, Petitioner was indicted for the aggravated murder and murder of Julie Salter. (Respondent's Ex. 102.) At that time, Petitioner was incarcerated in the State of Washington. Accordingly, on November 20, 1982, the State of Oregon ("State") took custody of Petitioner pursuant to Article IV of the Interstate Agreement on Detainers ("IAD"). (Respondent's Ex. 106 at 1.) Petitioner was arraigned on November 22, 1982. (*Id.*; Respondent's Ex. 119 at 2-5.)

On March 18, 1983, Petitioner obtained a continuance of his trial date to April 18. (Respondent's Ex. 119 at 168-76, 181-82.) On April 11, 1983, Petitioner moved to quash the indictment on the basis that the State improperly excused a grand juror, resulting in an indictment violative of Article VII (amended), Section 5, paragraph 2, of the Oregon Constitution.[1] (*Id.* at 194-97.) The indictment was quashed, with leave to resubmit the case to the grand jury. (*Id.* at 241-42.)

On April 12, 1983, the State moved for a 30-day continuance for "good cause." (*Id.* at 242-B, 294.) On April 15, 1983, the trial court granted the motion, giving the State until May 15, 1983, to resubmit the case to the grand jury. (*Id.* at 294-95.) The trial court articulated the factual basis for its finding of "good cause" as follows:

> I think that the good cause is that a Grand Jury of six people returned this indictment, which was more than the quorum. I think this is good cause to be-

[1] Article VII (amended), section 5, paragraph 2, of the Oregon Constitution provides:

> A grand jury shall consist of seven jurors chosen by lot from the whole number of jurors in attendance at the court, five of whom must concur to find an indictment.

> lieve that seven people, five of whom would probably do the same thing. And I think they should review it and I think good cause exists for seven people to look it over. So I feel that that is good cause. (*Id.* at 295-96.)

In accord with this ruling, the trial court denied Petitioner's motion to compel his return to the State of Washington. (*Id.* at 294-96.)

On April 18, 1983, the State filed a second indictment which erroneously changed the State's theory surrounding the murder of Julie Salter. (Respondent's Ex. 103.) On that same day, Petitioner moved to dismiss the *first* indictment, with prejudice, on the basis that the State had failed to meet the 120-day time limitation of the IAD. (Respondent's Ex. 119 at 300-13.) The trial court denied Petitioner's motion. (*Id.* at 320-21.)

Because the second indictment involved a change of theory, the State filed a third indictment on April 19, 1983. (*Id.* at 321-25; Respondent's Ex. 104.) Petitioner was arraigned on that date and entered a plea of not guilty to the third indictment. (Respondent's Ex. 119 at 325-30, 335.) On May 3, 1983, the trial court denied Petitioner's motion to quash the third indictment. (*Id.* at 334-O-334-S; 334-DD - 334-EE.)

B. *Analysis.*

The IAD, codified at O.R.S. 135.775, is a compact among forty-eight states and the United States designed to effect the speedy disposition of outstanding criminal charges against prisoners incarcerated in other jurisdictions.[2] *United States v. Stoner,* 791 F.2d 1408, 1409 (9th Cir. 1986). Article IV of the IAD provides:

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[2] The IAD "is an interstate compact approved by Congress and is thus a federal law within the meaning of § 2254." *Brown v. Wolf,* 706 F.2d 902, 905 (9th Cir. 1983). Accordingly, I make an independent determination of whether Petitioner's conviction was obtained in violation of the IAD. *Cody v. Morris,* 623 F.2d 101, 102-03 (9th Cir. 1980).

> In respect to any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the counsel of the prisoner being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

O.R.S. 135.775, Art. IV(C).

It is undisputed that Petitioner extended the 120-day limitation of the IAD by 29 days. (Memorandum In Support of Answer to Respondent's Motion to Deny Habeas Corpus Relief at 37.) Petitioner challenges only the 30-day continuance granted to the State in order to permit it to resubmit the case to the grand jury. Petitioner concedes that "[i]f the court was correct in concluding that the state showed good cause when it requested a 30 day continuance to obtain a new indictment, then the 120 day period would have been tolled for 30 more days and petitioner's position that the 120 day speedy trial requirement of the IAD had been violated would be incorrect." (*Id.* at 40.)

Neither party has cited to any case law addressing whether the need to resubmit a case to the grand jury constitutes "good cause" for a delay within the meaning of Article IV. Petitioner relies upon *People v. C'Allah,* 474 N.Y.S.2d 305 (1984) and *State v. Shaw,* 98 N.M. 580, 651 P.2d 115 (1982). Neither case is dispositive of the issues presented here.

In *C'Allah,* the time limitations of the IAD expired without any request for a continuance on the part of the state. 474 N.Y.S.2d at 305. Similarly, in *Shaw,* the state's request for a continuance came *after* the time limitations of the IAD had expired. *Shaw,* 651 P.2d at 117-18; *see also State v. Aaron,* 102 N.M. 187, 692 P.2d 1336 (N.M. App. 1984) (request for continuance under IAD must be timely). In the present case, in contrast, the State timely moved for a continuance. (*See* Respond-

ent's Ex. 119 at 242-B, 294-95.) Accordingly, I find the reasoning in *C'Allah* and *Shaw* unpersuasive.

In light of the timely nature of the State's request, and considering the nature of the request, I agree with the Oregon Court of Appeals' holding in this case that the trial court did not err in granting a continuance for good cause shown. In light of the previous indictment returned by the grand jury, a continuance to resubmit the charges to the grand jury was both reasonable and necessary. The court of appeals aptly explains:

> Defendant argues that there is a contradiction in the trial court's rulings because, in dismissing the first indictment, the court found that there was not good cause for excusing one grand juror but, when the state requested a continuance, the court found good cause to continue. We see no contradiction. Although the prosecutor lacked good cause to excuse the juror, it does not follow that, when defendant's motion to quash was made just six days before his speedy trial period would expire, the state lacked good cause to seek a continuance to resubmit the case to the grand jury. The trial court did not err in denying defendant's motion. *State v. King*, 84 Or. App. 165, 170, 173, 733 P.2d 472 (1989), *rev denied*, 303 Or. 455 (1987).

It is worthy of note, that the foregoing conclusion does not require a finding that reindictment automatically recommences the time limitations of the IAD. *See Shaw*, 651 P.2d at 118-19 (rejecting argument that reindictment causes time limitations of the IAD to begin anew). Rather, the only issue is whether a trial court has the discretion to grant a continuance, upon a timely motion by the State, to permit the State to resubmit the case to the grand jury under the circumstances presented here. I conclude that the continuance was both necessary and reasonable within the meaning of Article IV of the IAD.

II. *The Plea Agreement.*

A. *Background*

On August 3, 1983, Petitioner entered into a plea agreement with the State. Under the terms of the agreement, Petitioner agreed to reveal all of his knowledge concerning James Salter's involvement in the murder of his wife and to testify truthfully in any trial against any person who may be indicted for the murder. (Respondent's Ex. 110 at 2.) In exchange, Petitioner would be permitted "to enter a plea of guilty to the charge of murder with the understanding that [he would] . . . receive a life sentence with an order that he serve a minimum of ten years before being eligible for parole." (*Id.*)

The plea agreement further provided that if Petitioner refused to cooperate "no evidence resulting from th[e] agreement, whether that evidence is information, persons, names, documents or physical exhibits, [would] be introduced by the state against the defendant in any trial or hearing unless the state can establish that it was already aware of that information." (*Id.* at 3.)

On September 14, 1983, and October 6, 1983, the parties sought continuances of Petitioner's trial date. (Respondent's Ex. 119 at 431-438.) On or about December 6, 1983, Petitioner testified at James Salter's grand jury proceeding. (*Id.* at 516-M.) On December 7, 1983, Petitioner withdrew his request for a trial and advised the court that he intended to enter a guilty plea. (*Id.* at 440.) The entry of Petitioner's plea was scheduled for December 14, 1983. (*Id.* at 440-41.) On that date, however, a further continuance was granted. (*Id.* at 446-47.)

In January, 1984, Petitioner testified at James Salter's bail hearing. (*Id.* at 516-L.) On February 24, 1984, Petitioner moved to dismiss his attorney, Mr. Lyons, and to proceed to trial *pro se.* (Respondent's Ex. 117 at 18, 20.) Petitioner indicated that he no longer wished to enter a guilty plea as previously agreed because the State refused

to assure him a transfer to Alabama, requested by Petitioner for security reasons. (*Id.* at 20, 22.) In response, Deputy District Attorney Eglitis stated:

> "Your honor, I would like to state for the record that Mr. King's motion not only requests the dismissal of Mr. Lyons . . . . but also that it states in its body that he's withdrawing in full, to-wit, from all life endangering plea negotiations that exist at present.
>
> "In that regard, Your Honor, since the plea negotiations, part of the terms of that, involve the State not using anything against Mr. King in the event of trial, anything that we learned during the pendency of his cooperation. I'd like to inform Mr. King that if he did take the stand in the Salter case that he should understand, having withdrawn from the negotiations, that anything he says can and will be used against him. And the State fully intends to do so. (*Id.* at 21.)

Petitioner's motion to proceed *pro se* was taken under advisement by the trial court. The court advised Petitioner against his intended course of action and informed him that Mr. Lyons would remain available to him over the weekend should he reconsider his intent to proceed *pro se* and to "renege" on the plea agreement. (*Id.* at 25, 31.)

The trial court reconvened on February 27, 1984, at which time Mr. Lyons informed the court that Petitioner had stopped taking his daily doses of Tegretol, Dilantin, Haldol, Lithium and Benadryl. (*Id.* at 34, 37.) As a result, Petitioner's motion to proceed to trial *pro se* remained under advisement and the trial court ordered that Petitioner be examined by Dr. Parvaresh to determine Petitioner's competency. (*Id.* at 39.)

In a letter to the court dated March 9, 1984, Dr. Parvaresh opined that Petitioner was not competent. (Re-

spondent's Ex. 111.) However, Dr. Parvaresh noted that Petitioner had agreed to begin taking his medication and that "in a period of seven to ten days with full usage of his medication, [Petitioner's] condition should once again become stable and at that point this issue of competency can once again be assessed." (*Id.*)

On March 12, 1984, Petitioner reiterated his desire to proceed *pro se*. (Respondent's Ex. 119 at 453.) In light of the trial court's inclination to hold the motion in abeyance for 7 to 10 days, as suggested by Dr. Parvaresh, Respondent orally moved to have Petitioner examined at the Oregon State Hospital. (*Id.* at 455-57.) Respondent's motion was granted due to the trial court's conclusion that Dr. Parvaresh's report was inconclusive as to Petitioner's competency. (*Id.* at 478.)

In April, 1984, Petitioner testified at the trial of James Salter. (*Id.* at 516-AA.) On May 31, 1984, a hearing was held to determine Petitioner's competency to stand trial. At the conclusion of the hearing, the trial court ruled that although Petitioner suffers from a "mental defect," he was able to assist in his own defense. (*Id.* at 518-19.) Mr. Lyons thereafter indicated that Petitioner sought to withdraw his motion to proceed *pro se* and that they were "prepared to set a trial date in this case." (*Id.* at 519.) At that time, Respondent again noted that Petitioner's intent to proceed to trial indicated his intent to withdraw from the plea agreement. (*Id.* at 520.)

On June 5, 1984, Respondent formally moved for an order declaring that Petitioner had rescinded the plea agreement. On June 9, 1984, the trial court ruled that the plea agreement had been rescinded by Petitioner and that Respondent was no longer bound by its terms. (*Id.* at 526-27.)

Approximately one month later, twelve days before trial, Petitioner moved for an order compelling specific performance of the plea agreement. Petitioner argued that specific performance was warranted due to his co-

operation at the trial of Mr. Salter and his relinquishment of several constitutional rights, including the right to a speedy trial and the right against self-incrimination. (*Id.* at 533-34.) The trial court denied Petitioner's motion, holding that Petitioner's decision to withdraw from the plea agreement and proceed to trial was a "well-informed decision." (*Id.* at 538-39.)

Petitioner proceeded to trial and was convicted by a jury of the aggravated murder of Julie Salter. Petitioner was sentenced to serve a life sentence, with a mandatory minimum of 30 years, to run consecutively to any sentence Petitioner is serving in the State of Washington. (Respondent's Ex. 101.)

B. *Analysis*

Petitioner claims that he is entitled to specific performance of the plea agreement because the agreement was rescinded after he had substantially performed his obligations thereunder. Petitioner points to the fact that he (1) spoke to the police about Salter's involvement in his ex-wife's murder; (2) testified for the state at Salter's bail and grand jury hearings; and (3) testified at Salter's trial. (Memorandum In Support of Answer to Respondent's Motion to Deny Habeas Corpus Relief at 4-5.) Petitioner concludes that it was "fundamentally unfair for the state to reap a windfall . . . by taking advantage of petitioner's cooperation . . ., then turn around and seek to rescind its agreement with petitioner." (*Id.* at 25.)

At the outset, it is worthy of note that this Court has no "supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension." *Smith v. Phillips,* 455 U.S. 209, 222 (1982); *Wainwright v. Goode,* 464 U.S. 78, 83 (1983). In other words, in order to invoke this Court's habeas corpus jurisdiction, Petitioner must establish that the trial court's refusal to specifically enforce the plea agreement was violative of Petitioner's constitutional rights.

As noted by Respondent, the proper constitutional analysis in this case begins with the U.S. Supreme Court decision in *Mabry v. Johnson,* 467 U.S. 504 (1984). In that case, the Court held that a defendant's acceptance of a plea bargain does not create a constitutional right to have the bargain specifically enforced if it is withdrawn prior to the acceptance of a guilty plea. *Id.* at 507-10. Petitioner argues, however, that unlike the defendant in *Mabry,* he substantially performed the plea agreement, rendering its withdrawal unconstitutional. I disagree.

The Ninth Circuit has not rendered a definitive decision on this issue. In *McKenzie v. Risley,* 801 F.2d 1519 (9th Cir. 1986), *vacated in part on other grounds,* 842 F.2d 1525, 1536 (9th Cir. 1988), however, the court did state that detrimental reliance upon a plea agreement may make the agreement binding. 801 F.2d at 1527. However, the court further held that the disclosure of information in reliance upon a plea agreement did not constitute *detrimental* reliance where the information disclosed was obtained by the state from an independent source. *Id.* at 1527-28. In other words, the court focused upon whether the disclosure of the information pursuant to the plea agreement was truly detrimental to the defendant's interests at trial as opposed to whether the defendant had substantially complied with the agreement.

The reasoning in *McKenzie* is in accord with the First Circuit's decision in *U.S. v. Papaleo,* 853 F.2d 16 (1st Cir. 1988). In that case, the court similarly recognized that due process implications *may* arise by the withdrawal of a plea agreement detrimentally relied upon by the defendant. *Id.* at 18. In so holding, however, the court carefully distinguished between simple reliance and *detrimental* reliance prejudicing a defendant's right to a fair trial.

Noting that the defendant had not entered a guilty plea nor forgone a jury trial on any charge, the court in

Papaleo concluded that the defendant was "in no worse position than if no offer had ever been made by the government." *Id.* Hence, the defendant had no constitutional right to have the bargain enforced. *Id.* at 19; *see also Government of Virgin Islands v. Scotland,* 614 F.2d 360 (3rd Cir. 1980) (recognizing that detrimental reliance may give rise to due process implications if the reliance prevents a fair trial).[3]

Based on the foregoing, I conclude that the withdrawal of the plea agreement did not render Petitioner's conviction constitutionally infirm in light of the fact that Petitioner (1) was convicted after a jury trial; and (2) raises no argument that his prior reliance on the plea agreement deprived him of a fair trial. In sum, upon the withdrawal of the plea agreement, he was in no worse of a position than if the plea agreement had never been offered.[4] *See Papaleo,* 853 F.2d at 18; *Coon,* 805 F.2d at 825; *Scotland,* 614 F.2d at 365. Indeed, the plea agreement specifically provided that if it did not come to fruition, none of the information gained by the State would be used against Petitioner at trial. (Respondent's Ex. 110 at 3.)

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[3] The Eighth Circuit has adopted a more stringent rule. In *Strokes v. Armontrout,* 851 F.2d 1085 (8th Cir. 1988), for example, the court held that the only type of detrimental reliance sufficient to estop the prosecutor from withdrawing a plea bargain is the actual entry of an involuntary guilty plea. *Id.* at 1090. The court explained that short of an involuntary guilty plea, the defendant remained "free to exercise his right to trial by jury, with all of its privileges and safeguards." *Id.* at 1091; *see also United States v. Coon,* 805 F.2d 822 (8th Cir. 1986) (until entry of involuntary guilty plea, defendant has not been deprived of any constitutionally protected liberty interest).

[4] Because I find that Petitioner did not detrimentally rely upon the plea agreement, I need not address whether the trial court properly considered the financial prejudice suffered by the State when reaching its decision not to order specific performance, nor need I address whether Petitioner was mentally competent when he *first* indicated his desire to withdraw from the plea agreement.

Conclusion

Respondent's Motion to Deny Habeas Corpus Relief (#10) should be GRANTED and this action should be dismissed.

DATED this 6th day of March, 1992.

/s/ William M. Dale
WILLIAM M. DALE
United States Magistrate

APPENDIX D

[Filed Mar. 11, 1994]

UNITED STATES DISTRICT COURT
FOR THE NINTH CIRCUIT

No. 92-35471

D.C. No. 90-315-DA

ROBERT HADEN KING, JR.,
Petitioner-Appellant,

v.

NEIL BROWN,
Superintendent, Clallam Bay Corrections Center,
Respondent-Appellee.

ORDER

Before: PREGERSON, KLEINFELD, Circuit Judges, and LEGGE, District Judge.*

Judges Kleinfeld and Legge vote to deny appellant's petition for rehearing. Judge Pregerson would grant the petition.

Judges Pregerson and Kleinfeld vote to reject the appellant's suggestion for rehearing en banc and Judge Legge would so recommend.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

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* The Honorable Charles A. Legge, United States District Judge for the Northern District of California, sitting by designation.

APPENDIX E

28 U.S.C. 2254(d):

In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—

(1) that the merits of the factual dispute were not resolved in the State court hearing;

(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless that part of the record of the State court proceeding in which the determination of

> such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.

Interstate Agreement on Detainers, Or. Rev. Stat. § 135-.755:

The Agreement on Detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy

of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that the prisoner initiates a request for final disposition pursuant to Article III of this agreement or at the time that a request for custody or availability is initiated pursuant to Article IV of this agreement.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV of this agreement.

(d) "Department of Corrections institution" of this state shall mean any institution operated by the Department of Corrections.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, the prisoner shall be brought to trial within 180

days after the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of imprisonment and the request of the prisoner for a final disposition to be made of the indictment, information or complaint: Provided, that for good cause shown in open court, the prisoner or the counsel of the prisoner being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) of this Article shall be given or sent by the prisoner to the warden or other official having custody of the prisoner, who shall promptly forward it together with the certificate to the prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden or other official having custody of the prisoner shall promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner and shall also inform the prisoner of the right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) of this Article shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden

or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) of this Article shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) of this Article, and a waiver of extradition to the receiving state to serve any sentence there imposed upon the prisoner, after completion of the term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of the body of the prisoner in any court where the presence of the prisoner may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to the execution of the request for final disposition referred to in paragraph (a) of this Article shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom the

officer has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with paragraph (a) of Article V of this agreement upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; And provided further, that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon the own motion of the governor or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) of this Article, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Such authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the counsel of the prisoner being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which the

prisoner may have to contest the legality of the delivery of the prisoner as provided in paragraph (a) of this Article, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to paragraph (e) of Article V of this agreement, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV of this agreement, the appropriate authority in a sending state shall offer to delivery temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of such prisoner, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV of this agreement, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for attendance of the prisoner at court and while being transported to or from any place at which the presence of the prisoner may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this argeement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this argeement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised,

the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing contained in this paragraph shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of such time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out

more effectively the terms and provisions of this agreement, and who shall provide within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the agreement into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the agreement. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by prisoners or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party to this agreement, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

APPENDIX F

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

No. 82-247

STATE OF OREGON,
Plaintiff,
-vs-
ROBERT HADEN KING, JR.,
Defendant.

PLEA AGREEMENT

(1) The defendant herein, Robert H. King, himself and through his attorney, enters into the following plea agreement with the State of Oregon.

(2) The trial presently set for August 8, 1983 will be continued at the defendant's request. The defendant will waive any speedy trial right he has under any federal or state constitution or statute for the period of this continuance only, and for any further continuances or periods of time necessary to carry out the terms of this agreement. The defendant will waive any speedy trial rights that presently exist under the Interstate Agreement on Detainers for the period of this continuance and for any further continuances or periods of time necessary to carry out the terms of this agreement.

(3) The defendant will consent to be interviewed by officers of the state or their agents in the presence of defendant's counsel concerning all facts he knows about the death of Julie Ann Salter on September 23, 1980. The officers of the state or their agents will investigate those facts and present the results of the investigation

to the state. The state will evaluate those facts on the issue of whether or not they provide independent corroboration of the defendant's representation that James Salter agreed to pay him money and things of value to arrange for the death of Julie Ann Salter.

(4) If the State concludes that said information, in conjunction with information otherwise known to the state, does provide said independent corroboration, then and in that event the state will allow the defendant to enter a plea of guilty to the charge of murder with the understanding that the defendant will receive a life sentence with an order that he serve a minimum of ten years before being eligible for parole, and that said sentence will run concurrent to any sentence the defendant is now serving.

(5) It is agreed that the state is the sole judge of whether said information does provide said independent corroboration sufficient for ORS 136.440. The state will exercise good faith in making said judgment.

(6) It is further agreed by the defendant that if such plea should be entered, that the state will seek a presentence investigation and the defendant will testify truthfully in any trial against any other person who may be indicted in the future for any crime connected with the death of Julie Ann Salter.

(7) The defendant further agrees to join in any postponement of his sentence pending any grand jury proceedings, or trial, of any individual(s) so indicted and that any time so served by the defendant will be credited toward his sentence.

(8) Should the defendant refuse to cooperate or give information requested pursuant to this agreement, or should the state conclude under the terms of this agreement that the information does not provide independent corroboration, the parties agree that no evidence resulting from this argeement, whether that evidence is information, persons, names, documents or physical exhibits, will

be introduced by the state against the defendant in any trial or hearing unless the state can establish that it was already aware of that information.

(9) The parties further agree that this agreement has been presented to the court pursuant to ORS 135.432 and that the court has agreed to proceed pursuant to this agreement under said statute.

(10) The parties hereto have read this argeement and it has been read by the defendant, who has had a full opoprtunity to discuss its contents with this attorneys, and the parties agree to the terms herein contained.

STATE OF OREGON:

By: /s/ S. Dennis Miller
S. DENNIS MILLER
8-3-83
Date

By: /s/ Andrejs I. Eglitis
ANDREJS I. EGLITIS
8/3/83
Date

ATTORNEYS FOR
ROBERT HADEN KING, JR.:

/s/ William T. Lyons
WILLIAM T. LYONS
8/03/83
Date

/s/ Joyce J. Cresswell
JOYCE J. CRESSWELL
8/3/83
Date

/s/ Robert Haden King, Jr.
ROBERT HADEN KING, JR.
8-3-83
Date

APPENDIX G

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

No. 82-247

STATE OF OREGON,
Plaintiff,

-vs-

ROBERT HADEN KING, JR.,
Defendant.

[Filed Jun. 4, 1984]

ORDER

This matter coming on to be heard on May 31, 1984 before the HONORABLE DALE JACOBS, State of Oregon appearing by S. Dennis Miller, Deputy District Attorney, defendant appearing in person and with counsel, William T. Lyons, and it appearing to the Court that this is the time set for a hearing on defendant's ability to aid and assist, the State having presented testimony, arguments and evidence were presented on both sides, and the Court being fully advised;

THE COURT FINDS the following:

1. That the defendant has a mental defect characterized as an organic personality syndrome.
2. That the defendant's behavior has been at times bizarre.
3. That the defendant is able to aid and assist in his own defense and cooperate with his counsel.

4. That the defendant is able to understand the nature of the proceedings against him.

5. That the defendant is able to participate in his own defense.

Therefore, the Court orders that, the defendant having entered his plea of NOT GUILTY, trial is set for August 20, 1984 at 1:30 p.m., notice thereof having been given in open Court.

DATED: June 4, 1984

/s/ Dale Jacobs
DALE JACOBS
Judge

APPENDIX H

GUY A. PARVARESH, M.D.
Physician
Diplomate, American Board
Of Psychiatry
Diplomate, American Board
Of Forensic Psychiatry

March 9, 1984

The Hon. Patrick D. Gilroy
Judge of the Circuit Court
Clackamas County Court House
Oregon City, Oregon 97045

Re: Mr. Robert King

Dear Judge Gilroy:

Mr. Lyons, Attorney for Mr. King informed me that he had agreed to undergo another psychiatric evaluation and, therefore, I was able to examine him on March 8, 1984. I also discussed his management with the guards at the Clackamas County Jail.

Mr. King has continued to refuse to take medication for about two weeks. As a result, he has become quite depressed, rather withdrawn, uninvolved and, to a great extent, emotionally and mentally confused and disorganized. The worsening of his condition is quite likely due to his continued refusal to take his medication. Even though he is alert and oriented at this time, nevertheless he continues to have disturbance of thinking and, to a great extent, paranoid ideation related to his feelings toward his attorney, his parents and just about everyone around him. After a lengthy examination he finally agreed to restart his medication and I have already contacted the nurse in charge of the jail and she will make every effort

to put him back on the prescribed medication which includes Dilantin, Lithium and a small dosage of Haldol.

It is my clinical opinion that at the present time Mr. King is not competent to stand trial as he is clearly mentally too impaired to assist in his own defense. Additionally, in reviewing his thoughts and feelings relative to his decision to represent himself, this leads me to believe that this action is the product of his underlying psychiatric disorder and, therefore, he is not competent to make that decision either. I believe, within reasonable medical probability, in a period of seven to ten days with full usage of medication, his condition should once again become stable and at that point the issue of competency can be once again be assessed.

Sincerely,

Guy A. Parvaresh, M.D. PC

JERRY K. LARSEN, M.D. P.C.
Physician and Surgeon

Practice Limited to Psychiatry

April 9, 1984

Michael Clancy
Attorney at Law
181 N Grant, Suite 203
Canby, Oregon 97013

Re: Robert King
DOB: 08/14/51

Dear Mr. Clancy:

At your request, on April 5, 1984 I again examined Robert King in the Clackamas County Jail. I had previously examined him in the same facility on September 9, 1983. Briefly, he was born in Alabama, one of five brothers. His father is a practicing attorney. He, in turn, completed law school but has not taken the Bar examination. He is married, has two children, and he reports that his adult life was free of significant problems until he was involved in an aircraft accident in January of 1979. He sustained head injuries, experienced memory loss, and has since required hospitalization and medications to control grand mal seizures.

During my last examination, medical reports revealed Tegretol, an anti-seizure medication, prescribed at 200mg, 4 times per day, and Dilantin 100mg, 5 daily. Mr. King reports that he has refused to continue such medication. He had been receiving Lithium Carbonate 300mg, 3 per day, and Haldol 1mg, twice per day, also currently being refused. He reports that he had been transported to the State Hospital in Salem. There he had also refused all such medications, and he alleges that his attending physicians agreed that they were not needed.

On my examination, a partially blackened right eye was noted with multiple scattered bruises of the upper extremities also noted. There was also a 2x3cm healed scar below the left eye, alleged to be a stab wound inflicted by unknown assailants during the past weeks. Mr. King continues, by his own report, to refuse any medication. He freely admits that he is actively hallucinating, that unknown voices direct him to hang himself, and that his seizures continue out of control. I asked the jail personnel to permit my examination of his medication records. I was assured that this was permissable, but after waiting 30 minutes, it appeared that the nurse was too busy to provide these records and I could wait no longer. I therefore cannot verify if medications are currently being administered.

MENTAL STATUS EXAMINATION: The patient was again interviewed in the Clackamas County Jail at approximately 2 PM on the afternoon of April 5, 1984. He was oriented as to time, date, place, and person. He was dressed in a sweatshirt and sweat-pants, wearing a full beard, with a noticeable partially blackened right eye. He remained affectually inappropriate throughout the entire examination. He spoke in a halting manner, searching for words, at times slurring sentences together, and generally spoke in a pressured, agitated fashion. He stuttered on occasion and displayed minimal eye contact. Both recent and remote memory were impaired. He could repeat 5 digits forwards but only 2 in reverse with intermittent errors. He made mistakes on simple subtraction and other mathematical calculations. He attempted serial 4 subtractions, but he abandoned this effort quickly. He would not attempt subtraction of serial 7's. He reported auditory hallucinations directing him to hang himself. Tactile hallucinations were reported with vague, nondescript visual hallucinations present intermittently. On this examination, he did not report distortions of smell or taste, felt in my original examination to be seizure-like

aura. He freely admitted to depression with marked sleep disturbance, hyperphagia, and a 30 to 40-pound weight gain. He also admitted to suicidal ideation with at least two reported attempts to hang himself. The patient's insight and judgment are impaired. He is highly paranoid. Although generally cooperative in my examination, my overall impression was that of general refusal to cooperate with jail personnel or attorneys.

IMPRESSION:

1. Probable Organic Brain Syndrome, Secondary to Trauma.
2. Probable Seizure Disorder, Grand Mal in Type.
3. Probable Psychotic State, Secondary to Trauma.
4. Exposure to Hepatitis (By Patient Report).

RECOMMENDATIONS: This unfortunate gentleman appears to experience uncontrolled grand mal seizures. Memory loss would be expected. Without appropriate anti-seizure medication, one would anticipate continued falling and subsequent injuries. The patient displays organic dysfunction and a marked intellectual impairment in even the most simple tasks. He is clinically depressed, actively hallucinating, and presents an ongoing danger to himself. Of immediate concern is his paranoid ideation and refusal to cooperate with his attorneys. He trusts no one, wishes to represent himself in all legal matters, and openly distrusts his attorneys.

In my opinion, this patient is actively psychotic and has an uncontrolled seizure disorder. As such, he cannot aid and assist in his own defense. I would strongly recommend that he be restarted on a major antipsychotic agent, such as Haldol, and that without question, appropriate anti-seizure medications, such as Dilantin and Tegretol, be started. Access to previous medical/neurological evaluations would save time and expense, and also hopefully

avoid repeating needless diagnostic evaluations. Such information might also speed control of seizures by avoiding a trial and error method of medications which perhaps have already been evaluated. I will be glad to assist you in the care of this patient.

Thank you for this referral.

Sincerely,

Larry K. Larsen, M.D.